

SERVED: January 16, 1992

NTSB Order No. EA-3471

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D. C.
on the 8th day of January, 1992

BARRY LAMBERT HARRIS,
Acting Administrator,
Federal Aviation Administration

Complainant,

v.

VESTER EUGENE SHULTZ,

Respondent.

Docket SE-10560

ORDER DISMISSING APPEAL

The Administrator has moved to dismiss the appeal filed in this proceeding because it was not, as required by Section 821.48(a) of the Board's Rules of Practice,¹ 49 CFR Part 821, perfected by the filing of an appeal brief by September 25, 1991; that is, within 30 days after the law judge on August

¹Section 821.48(a) provides as follows:

"§ 821.48 Briefs and oral argument.

(a) Appeal briefs. Each appeal must be perfected within 50 days after an oral initial decision has been rendered, or 30 days after service of a written initial decision, by filing with the Board and serving on the other party a brief in support of the appeal. Appeals may be dismissed by the Board on its own initiative or on motion of the other party, in cases where a party who has filed a notice of appeal fails to perfect his appeal by filing a timely brief."

26, 1991 served a written decision granting the Administrator's motion for judgment on the pleadings.² We will grant the motion to dismiss.

Respondent's answer to the motion to dismiss identifies no reason why he could not have filed his brief, or an extension request, on or before the September 25 deadline. Rather, it contends that the brief he served on September 27 should be deemed timely because it was filed within 30 days after he received the law judge's written decision, in the mail on August 29, 1991. We must reject respondent's contention, for the clock under Rule 48(a) starts running when the law judge serves a written decision, not when it is delivered to a party.³

Although respondent correctly points out that the Board's rules do not require it to dismiss appeals that have not been timely perfected, the Board has unambiguously announced its intention to do so whenever an appeal brief's lateness is not excusable for good cause shown. See Administrator v. Hooper, NTSB Order EA-2781 (1988). Application of that policy here requires the grant of the Administrator's motion to dismiss.

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's motion to dismiss is granted, and
2. Respondent's appeal is dismissed.

KOLSTAD, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART, and HAMMERSCHMIDT, Members of the Board, concurred in the above order.

²The law judge affirmed an order of the Administrator revoking respondent's Airline Transport Pilot Certificate on the allegation that respondent's criminal conviction in Oklahoma of two violations of 21 O.S. Supp. 1986, § 1021.2 (Knowingly Possessing Sexual Material Involving the Participation of a Minor Child) demonstrated that he lacked the good moral character required of an ATP certificate holder under section 61.151(b) of the Federal Aviation Regulations.

³The law judge's order ends with the language "Entered and served this 26th day of August 1991, at Arlington, Texas", and a statement on appeal rights attached to the order unequivocally advises, among other things, that any notice of appeal "must be perfected within thirty (30) days after this date by filing, with the Board, a Brief in support of such Appeal."